

REMARKS/ARGUMENTS

These Remarks are responsive to the Office Action mailed on May 5, 2005 (the "Office Action"). The Applicants respectfully request reconsideration of the claim rejections for at least the reasons set forth below.

STATUS OF THE CLAIMS

Claims 39-47, 49-66, and 68-86 are pending in the application, and all claims currently stand rejected.

REJECTIONS UNDER 35 U.S.C. § 103(a)

The Office Action rejects claims 39-47, 49-66, and 68-86 35 U.S.C. § 103(a) as allegedly being unpatentable over Keyes (U.S. Pat. No. 6,456,983) in view of Land (U.S. Pat. No. 6,807,533). The Applicants respectfully traverse this rejection on the grounds that the prior art fails to create a *prima facie* case of obviousness, as explained in detail below.

As stated in MPEP § 2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations.

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *See, e.g., In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); and MPEP § 2143.01. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Furthermore, the teaching or suggestion to make the claimed combination and

the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Finally, as stated in MPEP § 2141.02, a prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

In applying the law to the present rejections, the Applicants respectfully submit that the combination of Keyes and Land does not rise to a *prima facie* case of obviousness because: (a) the references fail to teach all of the claims limitations, (b) there is no motivation to combine the references found in the references themselves or in the knowledge generally available to one of ordinary skill in the art, and (c) there is no reasonable expectation of success found in the prior art. Furthermore, compelling evidence of non-obviousness also urges the conclusion that the claims of the present invention are patentable over the prior art of record.

KEYES AND LAND BOTH FAIL TO TEACH ASSIGNING A SCORE TO AN ACCOUNT AGENT
BASED ON A CHANGE IN AN ACCOUNT'S DELINQUENCY

The present invention is directed towards a system and method for evaluating account agents that are attempting to collect remittance on delinquent accounts. Such account agents are often employed in call centers to telephone the holders of overdue credit card balances in an effort to secure a promise to pay overdue bills. Prior to the present invention, these account agents were given performance evaluations based on various conventional evaluation systems. For example, the account agents were sometimes evaluated based on the total amount of money that was received by the credit card company. While such regimes were somewhat effective, they were subject to misinterpretation that would make the account agents appear to be doing a better job than they actually were. For example, an account agent may receive a very high payment on an account that is only one month overdue, and then be satisfied with receiving very low payments on a number of other accounts, knowing that the first high payment will make the agent's performance look good, regardless of the failure to

obtain significant payments on the rest of the accounts. This type of system has at least two significant disadvantages: First, it de-motivates the account agent to perform well on every account, and second, it fails to address the credit card company's concern with preventing delinquent credit card account balances from becoming more than 180 days past due. This 180 day date is critical because at this time banking regulations force the credit card company to remove the debt from its assets, effectively devaluing the company, regardless of the fact that there is still some potential to recover the funds. Specification, p. 3, ll. 19-21.

Under the prior art incentive program that simply used the total amount of payment as the evaluation metric for account agents (and other incentive and evaluation systems), the account agents would focus on receiving high payments for accounts that were not close to the 180 day date (because recovery is typically easier on such accounts), and ignore accounts that are closer to the 180 day date. As such, the credit card company's concern for preventing the write-off of such delinquent accounts was not reflected in the account agent evaluation program, which would reward account agents even though they allowed many accounts to slip past 180 days. Additional details of this problem are explained in the Background of the Invention section of the present Specification.

The present invention addresses the deficiencies of the prior art by tracking how effective the account agents are at moving the delinquent accounts backwards from the critical 180 day date. To do so, the invention uses the *change* of the delinquency of an account as a metric for evaluating account agents. For example, an account agent receives a promise to pay \$300 on an account that has a \$5,000 balance and is three months overdue (in "Bucket 3").¹ If the bank does not receive this payment within a

¹ An account may have overdue amounts in numerous Buckets; for example, a portion of the debt may be two months overdue, and the remainder may be three months overdue. The delinquency level of the entire account is typically referred to by the highest delinquency level at which debt is due, so in the foregoing example, the entire account would be considered to be in Bucket 3.

fixed amount of time, then the account becomes four months overdue (rolls forward to "Bucket 4"), and the account agent is given a negative evaluation of the account balance (\$5,000) times the number of buckets moved (one), which is negative score of 5,000 points. If the bank receives a minimum payment (for example, \$100) that keeps the account within Bucket 3, then the bucket change is zero, and zero points are assigned. If the bank receives the promised \$300, and this amount moves the account back from Bucket 3 into Bucket 2, then the account agent receives a positive score of 5,000 points. (\$5,000 X 1 bucket = 5,000 points). Other examples of the method is provided in the Specification at page 13, lines 1-18.

This method differs significantly from the prior art, which would simply look at the average payment amount received or the percentage of promises kept. In doing so, the novel method provided and claimed in the present invention provides an improved ability to evaluate the CSRs, and also helps the credit card company's efforts to maintain its accounts as recordable assets.

Keyes does not address the issue of evaluating account agent performance in any way. Rather, Keyes addresses the situation in which a bank or other entity owns a number of accounts, and is trying to determine whether it is more worthwhile to keep the accounts and try to collect on them, or sell the accounts to other entities at a discount. As such, Keyes discloses a system and method for evaluating whether to accept an offer to purchase groups of delinquent accounts. *See*, Keyes, col. 2, ll. 3-9; *and* col. 7, l. 66 - col. 8, l. 7. To do this, Keyes generates historical portfolio information that tracks the payment history from previous delinquent accounts, *id.*, col. 5, ll. 11-22, and calculates a "score" that reflects "the payment which would be expected to be received on the subject historical delinquent account based upon certain assumptions." *Id.*, col. 5, ll. 63-65. One factor that is considered in generating this score is "the lapse of time from the last payment made on the subject delinquent account," and another is "how long the subject delinquent account has been in existence." *Id.*, col. 6, ll. 1-4. Using this scoring regime, Keyes is able to use historical account data ("liquidation profiles") to determine whether it is worthwhile to keep current delinquent accounts. *Id.*, col. 7, l. 66

- col. 8, l. 7. Keyes does this by comparing the current delinquent account with historical accounts having the same “score,” *id.*, col. 9, ll. 1-4, to determine whether the account owner can expect to get a greater return by selling the account to a third party, or keeping it and continuing to try to collect on it. *Id.*, col. 9, l. 39 - col. 10, l. 19.

Nothing like the present invention’s use of the *change* in delinquency as a CSR performance-measuring metric is illustrated in, or even suggested by Keyes. Although Keyes discloses examining the delinquency levels of accounts to estimate how much payment is expected to be received on the account, Keyes does so only by looking at the level of delinquency at the *particular time* that the evaluation is made, not the actual *change* in delinquency since some previous scoring. For example, the evaluation routine described at column 5, line 57 to column 6, line 36 merely discloses that the score is based on “the lapse of time from the last payment made on the subject delinquent account, [and] how long the subject delinquent account has been in existence.” These factors only relate to static, absolute values at the time of the evaluation. Keyes does not say anything about examining or using a *change*, such as a *reduction or increase*, in the delinquency level of an account as a factor when assigning a score to the account, which is a dynamic, time-dependent evaluation. In fact, Keyes does not include any teaching that a *change* in delinquency can be used as *any* sort of evaluative metric.

In summary, Keyes looks solely at static delinquency numbers — those existing at the precise time of the “scoring” — and does not examine the degree by which delinquency *changes* since a previous scoring. As such, Keyes fails to teach or suggest the limitation of weighting according to a “*change* in level of delinquency of the account,” as required by independent claims 39 and 58, and “calculat[ing] a *change* in delinquency,” as recited in independent claims 77 and 82. Keyes also wholly fails to teach or suggest evaluating account agents in any way, and therefore fails to teach or suggest the further limitations of “assigning a score to the account agent,” as recited in independent claims 39 and 58, and “assign[ing] a performance score to the account

agent, based at least in part on the change in delinquency,” as recited in independent claims 77 and 82.

Land is similarly deficient. Land teaches a web-enabled accounts receivable management system that performs five main functions: credit inquiry; remittance processing (which includes processing payments, delinquency management and payment-related functions); managing customer disputes; maintaining customer information; and handling security and general system functions. *See*, Land, col. 6, ll. 42-58. Land describes a “Delinquency Management” system having various features and steps for collecting on delinquent accounts. *See generally, id.*, col. 11, l. 45 - col. 14, l. 20. Land also briefly notes that the credit officers that collect on the accounts receivable are given target incentives with which they are evaluated. *Id.*, col. 11, ll. 53-60. The two target metrics used by Land are conventional: collections as a percent to available receivables (that is, the amount collected compared to the total amount due), and percent of forecasted collections (which are used to measure the credit officer’s ability to set accurate collection targets). *Id.* Land also describes credit officers being reviewed based on the “delinquency ratio,” which is the ratio of number of past due loans to the total number of loans serviced. *Id.*, col. 11, ll. 65-67. Throughout this disclosure, however, Land never teaches or suggests that a *change* in the level of delinquency of an account is or should be considered as a scoring metric when evaluating credit officer performance. As such, Land also fails to teach or suggest this claimed limitation of the independent claims.

In view of the foregoing, the Applicants respectfully submit that the combination of Keyes and Land fails to present a *prima facie* case of obviousness because the references fail to teach or disclose:

- “generating an account metric ... including a weighting according to at least a change in level of delinquency of the account, ... and ... assigning a score to the account agent based on the account metric,” as recited in claim 39;
- “identify[ing] a change in level of delinquency of the account ... generat[ing] an account metric ... including a weighting according to at least

the reduction in the level of delinquency of the account; and ... assign[ing] a score to the account agent based on the account metric," as recited in claim 58; or,

- "calculat[ing] a change in delinquency, as measured by the difference between the first delinquency level and the second delinquency level; and assign[ing] a performance score to the account agent, based at least in part on the change in delinquency," as recited in claims 77 and 82.

As such, reconsideration and allowance of independent claims 39, 58, 77 and 82, as well as all of the remaining claims, which depend therefrom, is respectfully requested. *See, In re Royka*, 490 F.2d 981, 180 USPQ 580 (C.C.P.A. 1974) (all limitations must be taught or suggested by the prior art); *and* MPEP § 2143.03.

NO MOTIVATION TO COMBINE THE REFERENCES IS FOUND IN THE
REFERENCES THEMSELVES OR THE GENERAL KNOWLEDGE IN THE ART

In combining the Keyes and Land references, the Office Action states that "it would have been obvious to one of ordinary skill in the art that the teachings of Keyes could have been modified to include the credit officer performance evaluation teachings of Land because it provides an efficient manner to monitor the collectors of delinquent accounts." Office Action, p. 4, ll. 7-10. However, the Applicants respectfully submit that there is no motivation to combine Keyes with Land found in the references themselves, or in the knowledge generally available to one of ordinary skill in the art.

As noted before, Keyes provides a system for evaluating whether delinquent accounts should be kept or sold to a third party offering to buy the accounts at a discount. *See, Keyes*, col. 2, ll. 3-9. In doing so, Keyes compares the current delinquent accounts to similar historical accounts to give some indication as to how much money can be expected on the current delinquent accounts. *Id.*, at col. 8, l. 62- col. 9, l. 19. Notably, Keyes does not discuss evaluating credit officers in any way. Nor does Keyes discuss any sort of credit inquiry functions, remittance processing functions (other than to simply observe the history of remittance on historical delinquent accounts), managing customer disputes, maintaining customer information, or handling system security of high-level system functions. In short, Keyes does not deal with any of the issues that are addressed in the Land patent.

Land also fails to disclose any particular connection with the subject matter of the Keyes patent. Although Land describes various factors relating to delinquent accounts that are considered in the process of trying to recover payment on these accounts, it does not discuss any specific regime for using this information to determine whether to keep or sell the account. In fact, the discussion in Land's "Delinquency Management" section, which is the portion of Land that describes examining statistical information about delinquent accounts in detail, appears to be premised on the assumption that it has been decided to *retain* the account (or that no consideration of selling the account has ever been made). As such, Land does not deal with a situation in which an entity is trying to determine whether to sell an account, or any of the other issues addressed in the Keyes patent.

Neither Keyes nor Land appears to make any disclosure that Keyes could be modified to include the credit performance officer evaluation teachings of Land, to thereby provide an efficient manner of monitoring collectors of delinquent accounts. As noted above, Keyes deals solely with evaluating delinquent accounts to determine how much money can be expected to be received on them, and then determining whether to sell them if the expected returns are less than the sale value. Since Keyes does not address the issue of evaluating the performance of account agents, Keyes can not provide any suggestion that its account scoring parameters (which are essentially used to categorize accounts into groups so that current delinquent accounts can be compared to historical delinquent accounts) could be used to evaluate the people actually trying to collect on those accounts.

Land, on the other hand, discloses evaluating credit officers, but the disclosure is limited to conventional incentives for measuring performance — collections as a percent of receivables, collection as a percent of forecasted collections, and delinquency ratios. Land, col. 11, ll. 53-67. In fact, Land does not make *any* statements or suggestions that any *other* factors can be used to evaluate the performance of the account agents. This failure to suggest that other factors can be considered in evaluating credit officers is particularly notable because Land actually does discuss

examining other statistical factors relating to delinquent accounts. For example, Land discusses the observation of account aging and payment history. *Id.*, col. 14, ll. 2-15. Despite discussing these other statistical factors, Land fails to connect these to the function of evaluating the credit officers. Clearly, then, Land does not suggest or disclose that any account metrics, other than the conventional incentives mentioned above, would be useful to evaluate the performance of credit officers in recovering remittance on delinquent accounts. As such, Land does not suggest any combination of its teachings with other art, such as Keyes, to provide other account metrics for evaluating credit officer performance.

In view of the foregoing, the Applicants respectfully submit that neither Keyes nor Land provides the requisite motivation to combine the references, and it has not been shown that such a motivation is in the knowledge generally available to one of ordinary skill in the art. In fact, the only source of such motivation is the present disclosure, which is the only known reference that recognizes that the change in level of delinquency can be used as an effective metric for evaluating the performance of customer service agents that are assigned the task of collecting on delinquent accounts. For this additional reason, reconsideration and allowance of independent claims 39, 58, 77 and 82, as well as all of the remaining claims, which depend therefrom, is respectfully requested. *See, In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); and MPEP § 2143.01.

THE REFERENCES DO NOT PROVIDE A REASONABLE EXPECTATION OF SUCCESS

The Office Action states that “The delinquent accounts taught by Keyes already contain a weighted scoring parameter and therefore associating the scoring of the account an liquidation profile with a credit officer (agent) would result in increased efficiency by the agent and a greater probability of collecting on a delinquent account as intended by Keyes.” The Applicants respectfully submit, however, that neither Keyes nor Land provides any reasonable expectation of success in their combined teaching.

As noted above, Keyes does not discuss any use of its scoring system as a utility to evaluate the performance of credit officers. As such, Keyes can not teach or suggest that its scoring system could be used successfully to evaluate credit officers that are trying to collect the debts owed on the delinquent accounts. Furthermore, although the Office Action alleges that the combination would result in increased efficiency by the agent and greater probability of collecting on delinquent accounts "as intended by Keyes," Office Action, p. 4, ll. 12-14, the Keyes patent actually does not state that its intention is to improve collection efficiency — as noted before, the entire purpose of Keyes is to evaluate how much return is likely to be obtained on a delinquent account, and then decide whether to keep or sell the account. Keyes does not mention anything about improving the efficiency of the collection process itself to obtain a greater probability of collection. As such, Keyes does not provide any suggestion that the use of its scoring regime would improve collection efficiency.

Furthermore, Land is limited to only disclosing the use of conventional incentives for measuring performance, and does not disclose or suggest that any other type of account metric might be useful for assessing the performance of credit officers. As such, Land also fails to provide any suggestion that using the change in the delinquency of an account could be a successful method for better evaluating the credit officers or improving their efficiency.

In view of the foregoing, the Applicants respectfully submit that Keyes and Land fail to provide the required teaching or suggestion that the use of a metric using the change in delinquency of an account would be successful. In fact, the conclusion that the combination of the claimed features would be successful appears to come solely from the fact that the combination is shown in the present invention, which can not be relied upon as the teaching or suggestion for a reasonable expectation of success. *See, In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). For this additional reason, reconsideration and allowance of independent claims 39, 58, 77 and 82, as well as all of the remaining claims, which depend therefrom, is respectfully requested. *Id.*

EVIDENCE OF NON-OBVIOUSNESS

The Applicants have provided herewith a Declaration under 37 C.F.R. § 1.132 of Dr. William F. Mann III (the "Mann Declaration") as additional evidence of non-obviousness of the claimed subject matter. Dr. Mann is First Vice President of Patent Business Development at JPMorgan Chase & Co ("JPMorgan"), and oversaw the implementation of an embodiment of the present invention at First USA bank, which is now part of JPMorgan. *See*, DECLARATION OF DR. WILLIAM MANN at ¶¶ 1, 4, 11, 12 & 20. As set forth in the Declaration, First USA's "Delinquency Movement Matrix" ("DMM") system is commensurate in scope with the claimed invention. *Id.*, ¶ 14. The DMM has also been directly responsible for various commercial successes enjoyed by First USA and JPMorgan. For example, the implementation of the DMM has resulted in improved delinquent account collection by increasing liquidation and reducing losses on such accounts. *Id.*, ¶¶ 15 & 20-27. The DMM has also resulted in commercial success in the form of greater efficiency in the workplace. This has been accomplished by using the DMM as a device to evaluate customer service agents' effectiveness at obtaining payment on delinquent accounts, and reducing the workforce to only include effective customer service representatives. *Id.* ¶¶ 16 & 20-27. As explained in the Mann Declaration and shown in the detailed comparison of the First USA DMM with JPMorgan's old CSS debt collection system, this commercial success is directly attributable to the features of the DMM. *Id.* ¶ 19, 24 & 25. Finally, the Declaration also establishes that the commercial success flows from the features and advantages described in the invention, such as those described at page 12, line 1 to page 16, line 2, and elsewhere. *Id.* ¶ 18, 24 & 25.

The Mann Declaration sets forth compelling evidence of non-obviousness, and fully satisfies the requirements forth in MPEP §§ 716.03. For this additional reason, the Applicants request reconsideration and allowance of the pending claims.

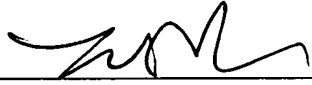
CONCLUSION

The Applicants respectfully submit that the application is in condition for allowance, and reconsideration and notice of allowance are respectfully requested. If the Examiner believes that prosecution might be advanced by discussing the application with Applicants' counsel, in person or over the telephone, Applicants' counsel would welcome the opportunity to do so.

No fees are believed to be due in conjunction with this filing, however, the Commissioner is hereby authorized to charge the undersigned's Deposit Account No. 50-0206 for any required fees.

Respectfully submitted,

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